

Primer on IMCA Standards Enforcement

Same rules. New levels of disciplinary process.

By Robert E. Frankel, Esq.

In 2004, a small delegation of IMCA members visited the Securities and Exchange Commission (SEC) in Washington, DC. One of the first questions asked of the IMCA delegation was, "Please describe your disciplinary process and tell us, how many licenses have you stripped as a result of disciplinary matters?"

The unspoken response was, "What disciplinary procedures?"

Much has changed in the eight years since that meeting with the SEC. This article is intended as a primer for CIMA®, CIMC®, and CPWA® licensees on IMCA's enforcement of professional standards. It outlines the grounds for possible discipline, the remedial action potentially applicable, and the procedures for disciplinary matters.

A complaint against a licensee can come from any number of sources: self-disclosure; a formal complaint from a consumer; or a complaint filed by IMCA staff as a result of issues identified by peers, employers, regulators, or other certifying agencies. Such complaints are treated as confidential. As a preliminary matter, all disciplinary cases at IMCA require an analysis of two essential issues: 1) whether there are any grounds for discipline; and 2) if there are, what discipline would appropriately address the conduct. As discussed below, these issues are initially within the exclusive jurisdiction of a peer group of volunteers known as the Professional Review Board (PRB).

Grounds

In substance, IMCA's rules provide that a licensee can be subjected to discipline by IMCA for any of the follow-



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ing three types of conduct in order to protect and maintain the integrity of the marks (CIMA, CIMC, or CPWA) among members of the financial services industry, the public, or IMCA:

1) violations of rules, laws, or guidelines applicable to the licensee; 2) suspension or termination of any other license, designation, or certification; and 3) improper conduct toward IMCA.

With regard to the first category, licensees are subject to discipline if they violate any of the following: the IMCA *Code of Professional Responsibility* (Code), the IMCA *Standards of Practice* (Standards), or the IMCA *Disciplinary Rules and Procedures* (Rules). A licensee also can be subjected to discipline by IMCA if the licensee violates other non-IMCA rules, such as certain criminal statutes (any felony or any crime less than a felony but involving theft or dishonesty). Noncriminal violations of statutes and/or the rules of self-regulating bodies (such as the Financial Industry Regulatory Authority or FINRA) also may provide the basis for discipline.

In addition, conduct resulting in the suspension or termination of any other license, designation, or certification held by the licensee is grounds for discipline.

Finally, improper conduct toward IMCA, such as failure to respond to a disciplinary petition or request, submitting false or misleading information, or violating the license agreement is proper grounds for discipline.

Disciplinary Procedure

IMCA's disciplinary procedure is a peer-review process that may result in a

hearing. Fact finders and decision makers are made up entirely of a licensee's peers. The Rules are available on IMCA's website (www.IMCA.org). A thumbnail of the process is as follows:

Step #1. First, the IMCA staff investigates the matter, prepares a petition (which is reviewed by IMCA's legal counsel), and submits the petition to the PRB for review. The PRB can dismiss the petition, return it for further research, or, if good cause is shown, appoint a three-person panel to hear and review evidence concerning the petition. Licensees are required to file answers within 30 days after receipt of the petition. In drafting answers, licensees should garner all relevant information and put together a concise but thorough response to the petition, along with all supporting documentation. Care should be taken to look at the salient facts relevant to the violations alleged. Consultation with the Code, Rules, and Standards is advisable.

Step #2. A discovery phase occurs where both sides exchange information that they intend to use at the hearing, and either side may request information from the other side. The PRB delegates fact-finding authority to a hearing panel, which is made up of the licensee's peers from a pool of volunteers who neither serve on IMCA's board of directors nor on the PRB.

Step #3. A hearing occurs within 90 days after the end of the discovery phase. At the hearing, the petition and supporting documents set forth the violations alleged, and the accused is given the opportunity—with or without representation of counsel—to make a statement and to set forth and elicit a defense through witnesses and documents. Formal evidentiary rules are



relaxed, and questions may follow from the panel members.

Step #4. At the hearing's conclusion, the panel meets and makes a recommendation to the PRB. The PRB thereafter reviews the recommendation and issues a decision in the case, including disciplinary measures, if any. The PRB's decision can be appealed to an appeals board, whose decision becomes final.

Discipline

Assuming that the PRB finds that grounds for discipline exist, the PRB also will determine the appropriate remedy, which may include the following, presented in order of escalation from least to most:

Private censure. A private censure letter is sent from the PRB to the licensee, informing the licensee of the violation and urging the licensee to come into compliance.

Public censure. A public censure letter is published in venues including the IMCA website, media alerts, and/or notification to FINRA and other financial services organizations.

Suspension. A licensee's right to use the IMCA-owned mark is suspended for a specific time period.

Termination. A licensee's right to use the marks can be permanently terminated.

The rules also grant the PRB the authority to fashion any other order that it deems appropriate.

Practice Pointers

The following are the opinion of this IMCA staff member and do not necessarily represent the view of any of the volunteer decision makers who would handle and decide actual discipline cases. Accordingly, while helpful, these practice pointers are not binding on IMCA or any of its boards, committees, or agents.

Disclose, Disclose, Disclose

One of the most-common problems affecting licensees is faulty disclosure, which can take either of two forms:

- 1) affirmative misstatements or
- 2) material omissions.

Affirmative misstatements occur when licensees fail to carefully read the attestations they sign and submit in connection with continuing education (CE) or certification statements. Licensees should take great care in ensuring that when they attest to having had no involvement in any matter identified in the attestation, that such attestation is true, complete, and accurate. Far too many licensees perhaps fail to read what they are signing, which has resulted in a large number of petitions alleging nondisclosure. When in doubt, it's best to err on the side of disclosure.

In addition, the Rules themselves contemplate voluntary self-disclosures without the need to be asked to sign an attestation. Convictions of crimes deemed serious enough to be grounds for discipline and losses or suspensions of any other license, designation, or certification are reportable to IMCA within 60 days. Becoming a party to a civil, regulatory, or governmental matter or to an arbitration or mediation also requires prompt notice to IMCA. Again, when in doubt, disclose as soon as possible.

Don't Let Your License Lapse

Although not within the purview of the disciplinary process, a large number of licensees let their licenses lapse for failure to complete the requisite CE, pay the renewal fee, or make the renewal disclosures before the renewal deadline. It's advisable to keep the license active by meeting the renewal requirements on time. Otherwise, a lapsed licensee is faced with the need to follow the reinstatement rules, which creates a number of hurdles to becoming eligible to continue to use the marks, including the need to: 1) file a timely request for reinstatement; 2) submit oneself a second time to acceptance by the Admission Committee, which can be delayed if any Uniform Application for Securities Industry Registration or Transfer (form U4) issue arises; 3) comply with the

additional rules that would make one eligible for reinstatement, such as additional CE or passing the certification exam again; and 4) pay additional fees to apply.

But If Your License Does Lapse, Stop Using the Marks

If you receive a cease-and-desist letter due to letting your CIMA, CIMC, or CPWA certification lapse, you should ensure compliance with such cease-and-desist notice and document all efforts to comply. Misuse of a mark is a significant factor considered by the Admissions Committee in reinstatement applications, and ignoring a request to stop using marks when one is not licensed can hurt an applicant.

Disciplinary Statistics

Since that fateful day at the SEC in 2004, IMCA initiated a disciplinary process and hired a part-time paralegal in 2007. Thereafter, the Rules, Code, and Standards have been drafted and/or revised, and IMCA has implemented a formal disciplinary process. To enhance those efforts, in 2011 IMCA hired a full-time lawyer who is focused primarily on compliance issues, resulting in an increasingly robust disciplinary process that, among other things, helps protect the public and strengthen the marks. Since the initiation of a formal disciplinary process, the PRB has initiated 19 petitions, 10 of which are currently active and working toward completion. Without accounting for any penalties that may be issued in the 10 currently active files, IMCA has issued three terminations, one suspension, and five private censures. 

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Endnotes

- ¹ In the event of any discrepancy between the Rules and this article, the Rules shall control.